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REQUEST FOR THE INCLUSION OF A SUPPLEMENTARY ITEM IN THE AGENDA OF THE FORTY-SIXTH SESSION

NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Letter dated 11 September 1991 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

On 21 August last, the Department of State of the United States of America announced the official position of the United States Government on our request for the inclusion in the agenda of the General Assembly of an item on the "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba".

In a statement issued on that day, the above-mentioned Department stated: "The United States embargo of Cuba is not an appropriate issue for discussion at the United Nations. Every Government has a right and a responsibility to choose the Governments with which it wishes to have commercial and political relations." With reference to the letter which I addressed to you on 16 August last (A/46/193), the statement goes on to say: "Ambassador Alarcón is mistaken in calling the embargo a blockade. A blockade implies that the United States is taking action to prevent other countries from trading with Cuba. That is clearly not the case."

I wish, however, to draw briefly to your attention some of the current provisions of United States law which the Department of State purposely omitted in its statement and which clearly show that legislative action and other measures have been taken to obstruct and prevent other countries from developing trading relations with Cuba, thereby unquestionably implementing a policy of blockade. As an example that illustrates the nature of the blockade imposed by the United States of America against our country, I also attach a list of commercial transactions with third country companies, through which Cuba sought to obtain medical equipment and products, which were interrupted

or simply cancelled as a result of the embargo and pressure from the Government of the United States of America.

In its official statement the United States Government contradicts United States law and actions, and it is inconsistent when it adverts to the right of the Government to choose the Governments with which it wishes to have commercial and political relations. Maybe it has not realized that the other members of the international community also have that right and that it is therefore up to them, not to the United States of America, to decide whether to have this type of relations with our country?

As stated in the explanatory memorandum requesting the inclusion of this item, the blockade imposed by the United States is an essential element of that country's aggressive policy against Cuba the declared objective of which is to impose on Cuba a political, social and economic system which the United States authorities consider to be more acceptable.

Consideration of this matter by the General Assembly is appropriate and is inherently justified by the principles and purposes upon which the United Nations is based.

In view of the relevance of the attached documents (see annex) and of this letter to the consideration of the inclusion of the item, I should be grateful if you would circulate them among all Member States as documents of the General Assembly.

(Signed) Ricardo ALARCON de QUESADA
Ambassador
Permanent Representative

ANNEX

The United States recently has stated that "the basic goal of [its trade and financial] sanctions is to isolate Cuba economically and deprive it of United States dollars" (The United States Department of the Treasury, Office of Foreign Assets Control, Cuba: What You Need to Know About the U.S. Embargo (June 20, 1991)). Consistent with this goal, the United States has gone well beyond suspending commerce between its own citizens and Cuba to seek the most sweeping extraterritorial application of its embargo laws. In doing so, it has exceeded the confines of its national jurisdiction under international law and has violated the sovereignty of other States.

Summarized below are the major respects in which the United States seeks extraterritorial application of its embargo laws against Cuba.

1. The United States prohibits a corporation or other business entity organized under the laws of a third country and located and doing business in that country from exporting to Cuba products manufactured wholly in that third country, but which incorporate any United States component part or material. This is so irrespective of whether the component part or material has been completely transformed in the new product. Exceptions are possible only upon application by the third-country company demonstrating that the United States-origin component parts or materials constitute 20 per cent or less of the value of the product (Source: 15 Code of Federal Regulations §774.1; 15 Code of Federal Regulations §785.1).

2. The United States prohibits nationals of third countries from re-exporting United States origin goods to Cuba unless their re-exportation is specificially approved by the United States Department of Commerce. It is the policy and practice of the United States Commerce Department to deny approval. It makes no difference whether or not the third-country national originally obtained the goods for resale or how long the third-country national has owned the goods (Source: 15 Code of Federal Regulations §774.1).

3. The re-exportation restrictions apply equally to United States technical data, that is, information in any form, tangible or intangible, which can be used in the design, production or manufacture of products. Under the applicable restrictions, a third-country national may not re-export to Cuba technical data that originally was exported from the United States. Moreover, in many instances third-country nationals may not export products manufactured wholly in the third country and containing no United States components or materials simply because the products were produced by use of United States-origin technical data (Source: 15 Code of Federal Regulations §779.1; 15 Code of Federal Regulations §779.8; 15 Code of Federal Regulations §779.4).

4. The United States asserts the power to extend the embargo to corporations and other business entities organized under the laws of third countries and located and doing business in those countries simply because

they are owned or controlled by United States corporations or persons. A third-country company, moreover, may be found to be "controlled" by a United States entity and hence subject to the embargo even when the United States ownership interest in the company is a minority share. The concept of "control" is applied flexibly and leaves the United States Government wide discretion in its enforcement.

Current United States Government policy is to permit third-country companies owned or controlled by United States entities to engage in import and export transactions with Cuban nationals. A wide range of commercial transactions are still prohibited, however, including investments by the third-country company in Cuba, financing Cuban commercial activities, joint ventures with Cuban companies and other normal commercial transactions.

Furthermore, even the import and export transactions that are permitted are subject to strict limitations. The third-country company must apply to the United States Treasury Department for a licence to enter into these transactions. In order to obtain a licence, the third-country company must demonstrate that it operates independently of the head office in the type of transactions for which the licence is sought; that no officer or employee of the head office has had or will have any involvement whatsoever in the licensed transaction; that the transaction will not involve United States dollar accounts or dollar financing; and that any financing or extension of credit by the third-country company will comply with the Treasury Department's strict limitations. The United States Government has acknowledged that these restrictions prevent many third-country companies from seeking licences.

In addition, this exception for third-country companies, limited as it is, has no application to branches of United States companies which are operating and licensed to do business in third companies. The embargo prohibitions continue to apply to them in full. The exception only applies to companies which are separately incorporated in a third country (Source: 31 Code of Federal Regulations §515.559; 31 Code of Federal Regulations §515.329; Testimony before United States Congress of Director of the Office of Foreign Assets Control Newcomb, 2 August 1989).

5. The United States extends the embargo to third country corporations and other business entities located and doing business in those countries if there is even a minority participation by Cuban nationals. Even as little as 25 per cent ownership by Cuban nationals may be sufficient to subject the third-country company to the embargo. Such companies are considered "Cuban nationals" for all purposes and hence may not have any financial or commercial dealings with the United States or United States nationals. Any property the company may have in the United States will be frozen (Source: 31 Code of Federal Regulations §515.302).

6. The United States prohibits third-country banks from maintaining United States dollar-denominated accounts for Cuba or Cuban nationals. It also prohibits any use of United States currency or United States dollar-denominated accounts in transactions between third-country nationals

and Cuban nationals (Source: United States State Department, Background Briefing to Latin America Embassies, 12 July 1963; Deputy Secretary of the Treasury Robert Carswell, Conference on the Internationalization of the Capital Markets, March 1981; Comptroller General's Report to the Congress of the United States, 14 November 1980).

7. The United States bars the importation of goods manufactured in a third country by a company organized under the laws of that country which are made of or derived even in part from any article which is a growth, produce or manufacture of Cuba. It makes no difference whether the Cuban article incorporated in the third-country product is only a raw material used in manufacturing the product, is found only in trace amounts or has been thoroughly transformed in the process of manufacture (Source: 31 Code of Federal Regulations §§515.204).

8. The United States bars the importation of all goods which originally were the growth, produce or manufacture of Cuba regardless of whether the present owner is a third-country national, there is no current Cuban interest in the goods and no matter how long they have been owned by the third-country national (Source: 31 Code of Federal Regulations §515.204).

9. The United States, by administrative fiat, has declared that literally hundreds of corporations and other business entities organized under the laws of third countries and located and doing business in those countries are "specially designated" nationals of Cuba. Upon the issuance of such a declaration, all of the prohibitions of the embargo applicable to Cuban nationals automatically apply to the "specially designated" entity, and hence no United States national may have any commercial or financial dealings with the designated entity and all of its property located in the United States is frozen. The ground for designation, unsupported by any judicial findings, is that the designated company has acted on behalf of the Government of Cuba or is owned or controlled directly or indirectly by the Government of Cuba.

The United States on occasion has withdrawn a designation in response to the protest of the affected third-country company or its government, effectively conceding it acted erroneously. The purpose of the United States none the less was achieved, as the threat of being designated has had a coercive impact upon these and other companies, dissuading some from dealing with Cuba for fear of being designated (Source: 31 Code of Federal Regulations §515.306).

10. United States law requires United States representatives to the principal international financial institutions to oppose the granting of any loans or other financial support to Cuba. The affected international financial institutions include the Inter-American Bank, the International Bank for Reconstruction and Development, the International Development Association and the International Monetary Fund (Source: 22 United States Code §283r; 22 United States Code §284j; 22 U.S.C. §286aa).

11. The United States Senate recently approved measures that would extend the extraterritorial reach of the embargo even further. These initiatives are meant to have a coercive impact on the policies of third countries whether or not they are enacted into law at this time. One such measure would reverse the current practice of permitting the foreign subsidiaries of United States companies to engage in limited export-import transactions with Cuba. Other measures target specific countries that are Cuba's current economic partners. They would require those countries to cease all direct or indirect assistance to Cuba or face reprisals, such as exclusion from significant United States trade and financial programmes and the United States blocking support from international financial institutions. The coercive effect of these pending measures is heightened by the past practice of the United States - relaxed only in the face of international protest - of prohibiting United States-owned third-country subsidiaries from engaging in trade with Cuba, of denying economic assistance to any country which itself furnished assistance to Cuba and of denying assistance to any country which permitted its vessels and aircraft to transport goods to or from Cuba (Source: Senate Bill No. 1435, sections 517, 902 and 2007, adopted 26 July 1991; 22 United States Code Sections 2730 (a) (1974)).

12. In addition to the measures enacted or proposed to be enacted into United States law, a United States policy aimed to pressure third-country Governments and companies to sever ties with Cuba or face the consequences has been documented by research and press accounts published in the United States, Cuba and other countries (Source: "Cuba Woos Capitalists Feebly, Driven by Need Instead of Desire," The Wall Street Journal, 11 September 1991, p. A-13).

APPENDIX

Some trade operations for the purchase of spare parts, medical and lab equipment for which the United States Treasury Department refused export licences

Firms from third countries which trade with Cuba

Country: Federal Republic of Germany (currently Germany)

Supplier: SIEMENS AG

Products: Gammacameras: equipment for use in nuclear medicine to diagnose different pathologies by measuring different body densities. Colored Doppler Ultrasound Sonoline S1-1200: a machine used to diagnose cardiovascular diseases. Magnetic Nuclear Resonance System: diagnostic equipment which is used in addition to X-rays or tomography, in pathologies which are unable to be diagnosed using the above equipment.

Country: Sweden

Supplier: LKB

Products: Electrophoresis laboratory equipment: used to determine blood protein and hormone levels. Chromatography Columns: attachments for chromatography machines for use in research related to medications, proteins, fats, etc.

Country: Japan

Supplier: Toshiba Corporation

Product: Colored Doppler Ultrasound SSH-65A: a machine used to diagnose cardiovascular pathologies.

Country: Japan

Supplier: Nihon Kohden

Product: Neuropack IV: machine for the study of neurophysiological diseases. Important in the diagnosis of neurological and ophthalmologic illnesses.

Country: France

Supplier: CGR (Thompson Group CGR; this firm was acquired by General Electric)

Product: spare parts for X-ray machines. There are an extensive number of these machines in the country

Country: Argentina

Supplier: MEDIX

Product: spare parts for cleaning dialysis machines used in nephrology, made in the United States by Mesa Medical Incorporated, model MM-1000. Spare parts for ophthalmologic ultrasounds, Ultrascan B System 4 models.